



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2982



Alan Klotzbier
P.O. Box 93
Marlborough, NH 03455-0093

Re: Main Street, Marlborough, NH

ADMINISTRATIVE ORDER
No. WD 03-015

April 28, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Alan Klotzbier, pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Alan Klotzbier is an individual having a mailing address of P.O. Box 93, Marlborough, NH 03455-0093.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
3. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
4. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".

5. Env-Ws 415.02(y) defines significantly altering terrain to include disturbing more than 100,000 square feet of contiguous area.
6. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
7. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
8. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
9. Alan Klotzbier is the owner of property located on Main Street (a/k/a Route 101), Marlborough, NH more particularly identified on Town of Marlborough Tax Map 2 as Lot 107 ("the Property").
10. On February 4, 2003, DES personnel inspected the Property and observed that alteration of terrain activities in excess of 100,000 square feet (approximately 435,000 square feet) had taken place on the Property, wetlands and surface waters on the Property had been impacted, and no erosion and sediment control measures had been installed on the Property.
11. A review of DES records showed that neither a standard "Dredge and Fill" permit application nor an "Alteration of Terrain" (Site Specific) permit application had been submitted by Mr. Klotzbier for the activities on the Property described in Paragraph 10.
12. On February 28, 2003, DES sent Mr. Klotzbier a letter informing him that the activity observed on the Property required permits, and requesting him to cease all activities on the Property except for measures necessary to stabilize the Property. The letter was accompanied by Wetlands and Site Specific applications.
13. On March 6, 2003, Mr. Klotzbier called DES in response to the letter dated February 28, 2003. DES personnel explained to Mr. Klotzbier requirements for both permits and stated several times during the conversation that he should stop work on the Property until the proper permits were obtained, except for the installation of erosion control measures.
14. On April 3, 2003, DES personnel conducted an inspection of the Property. During the inspection, the following were observed:
 - a) Temporary erosion control measures were either inadequate or had not been installed;
 - b) Large areas of exposed soils on the Property remained unstabilized;
 - c) Sediment laden runoff had left the Property, had migrated through the abutting property on the south side of Route 101 and entered Robins Brook and one of its tributaries;
 - d) Earth moving activities were on-going on the Property; and
 - e) There appeared to be additional impacts to a delineated wetland (i.e. a seasonal stream channel on the Property).

15. At the time of the April 3, 2003 inspection, DES personnel again informed Mr. Klotzbier that he should discontinue all earth moving activities on the Property and perform only the work necessary to stabilize the site and control the erosion on the Property.

16. On April 4, 2003, DES personnel returned to the Property. DES personnel observed turbidity in Robins Brook and a tributary to Robins Brook caused by runoff emanating from the Property. Water samples were taken at several locations and analyzed for turbidity. Turbidity results were 120 Nephelometric Turbidity Units (NTUs) at a point where runoff from the Property entered the tributary to Robins Brook, 40 NTUs approximately 150 feet further downstream within the tributary, and 21 NTUs in Robins Brook. The background turbidity level taken adjacent to the Route 101 bridge east (upstream) of the Property measured 1.2 NTUs.

17. Surface water runoff from the Property entered into Robins Brook, a surface water of the state.

18. Pursuant to RSA 485-A:8, II, Robins Brook is classified as a Class B water.

19. Pursuant to Env-Ws 1703.11(b), turbidity in Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.

20. RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES. Sediment-laden water constitutes waste as defined under RSA 485-A.

21. On April 17, 2003, DES personnel conducted an inspection of the Property. The following was observed:

- a) Earth moving activities continued to occur on the Property;
- b) An additional area on the Property had been cleared, stumped and the terrain had been altered;
- c) A 50 foot culvert had been installed in the area delineated as a seasonal stream channel without a permit from DES;
- d) The erosion control measures that had been installed on the Property were inadequate;
- e) An area of deposition of sediment that had migrated from the Property onto the abutting property on the south side of Route 101 and entered a tributary to Robins Brook measured approximately 10 feet in width and 150 feet in length, at a depth of 5-9 inches.

22. During the April 17, 2003 inspection, DES personnel again directed Mr. Klotzbier to immediately stop all earth moving activities, stabilize the exposed soils, and install erosion and sediment control measures on the Property.

D. DETERMINATION OF VIOLATIONS

1. Alan Klotzbier has violated RSA 485-A:17 by altering more than 100,000 square feet of terrain without a permit from DES.

2. Alan Klotzbier has violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on the Property.
3. Alan Klotzbier has violated RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize areas within the Property.
4. Alan Klotzbier has violated RSA 485-A:13, I, by discharging waste into the surface waters of the state without obtaining a permit from DES to do so.
5. Alan Klotzbier has violated RSA 482-A:3, I by placing fill in wetlands and surface waters of the State, located on the Property, without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Alan Klotzbier as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **Immediately stabilize the Property** as necessary to protect surface water quality and prevent erosion.
3. **Within 5 days of the date of this Order**, prepare an erosion and sediment control plan ("Plan") for the Property, and submit said Plan to DES for review. The Plan shall include, at a minimum, temporary and permanent erosion control measures necessary to stabilize the site, protect surface water quality, and prevent further impacts to surface waters. The Plan shall also include a schedule for implementing the measures described in the Plan.
4. Implement the Plan on the Property, as approved by DES, in accordance with the approved schedule.
5. **Within 20 days of the date of this Order**, submit a wetlands restoration plan to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:
 - a) A plan with dimensions, drawn to scale, showing:
 - i. existing conditions on the sites, with wetland boundaries and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
 - b) A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
 - c) A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
 - d) A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date.

- e) A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on September 15, 2003, and September 15, 2004.
- 6. **Immediately** retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Item 5 above and to submit the restoration progress reports.
- 7. Implement the restoration plan proposed in accordance with Item 5 above only after receiving written approval, and as conditioned, by DES.
- 8. Submit the completed site specific application and wetlands restoration plan, including erosion and sediment control plans to:

Ana Ford
Site Specific Program
DES Water Division
6 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by determinations D.1, D.2, D.3 and D.4 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Any person aggrieved by determination D.5 of this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion.

Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Alan Klotzbier remains obligated to comply with all applicable requirements. DES will continue to monitor Mr. Klotzbier's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Cheshire County Registry of Deeds so as to run with the land.

for  **COPY**
Harry T. Stewart, P.E., Director
Water Division

 **COPY**
Robert Monaco, Acting Commissioner

CERTIFIED MAIL # 7099 3400 0002 9774 7770

cc: Mark Harbaugh, DES Legal Unit
Tim Drew, DES PIP Office
Cheshire County Registry of Deeds
William Thomas, WET/WD/DES
Marlborough Planning Board
Marlborough Conservation Commission